

# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: ) MDL No. 1456 and  
AVERAGE WHOLESALE PRICE ) C.A. No 01-12257-PBS  
PHARMACEUTICAL LITIGATION ) Courtroom No. 19  
 ) 1 Courthouse Way  
Boston, MA 02210

FEBRUARY 10, 2005

2:10 P.M.

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

Valerie A. O'Hara  
Official Court Reporter

## 1 A P P E A R A N C E S:

2 Hagens Berman, LLP, by THOMAS M. SOBOL, ESQ. and STEVEN  
3 W. BERMAN, ESQ., One Main Street, Cambridge, Massachusetts,  
4 for the Plaintiffs;

5 Spector, Roseman & Kodroff, P.C., by JEFFREY L.  
6 KODROFF, ESQ., 1818 Market Street, Suite 2500, Philadelphia,  
7 Pennsylvania 19103; for the Plaintiffs;

8 Ropes & Gray, by JOHN T. MONTGOMERY, ESQ., One  
9 International Place, Boston, Massachusetts 02110-2624, for  
10 the Plaintiffs;

11 Skadden, Arps, Slate, Meagher & Flom LLP, by SHEILA L.  
12 BIRNBAUM, ATTORNEY, Four Times Square, New York, New York  
13 10036-6522, for Schering;

14 Patterson, Belknap, Webb & Taylor, LLP, by  
15 WILLIAM F. CAVANAUGH, JR, ESQ. and JESSICA GOLDEN CORTES,  
16 ATTORNEY, 1133 Avenue of the Americas, New York, New York  
17 10036-6710, for Johnson & Johnson;

18 Davis, Polk & Wardwell, by D. SCOTT WISE, ESQ., 450  
19 Lexington Avenue, New York, New York 10017, for  
20 Coordinating Counsel for the Defense Group and on behalf of  
21 AstraZeneca Pharmaceuticals;

22 Edelson & Associates, LLC, by MARC H EDELSON, ESQ., 45  
23 West Court Street, Doylestown, Pennsylvania 18901;

24 Heins Mills & Olson, P.L.C., by ALAN I. GILBERT,  
25 ESQ., 3550 IDS Center, 80 South Eighth Street, Minneapolis,  
Minnesota 55402;

Covington & Burling, by MARK LYNCH, ESQ., 1201  
Pennsylvania Avenue N.W., Washington D.C. 20015;

CHRISTOPHER J. BLYTHE, ASSISTANT ATTORNEY GENERAL, 17  
West Main Street, P.O. Box 7857, Madison, Wisconsin  
53707-7857, for the State of Wisconsin;

1 APPEARANCES (CONTINUED):

2 Miner, Barnhill & Galland, P.C., by ROBERT S. LIBMAN,  
3 ESQ., 14 W. Erie Street, Chicago, Illinois 60610, for the  
4 States of Illinois, Wisconsin, Kentucky and Idaho;

5 Kline & Specter, by DONALD E. HAVILAND, JR., ESQ., 1525  
6 Locust Street, Philadelphia, Pennsylvania 19102;

7 JAMES A. DONAHUE, III, CHIEF DEPUTY ATTORNEY GENERAL,  
8 Antitrust Section, Strawberry Square, Harrisbury,  
9 Pennsylvania 17120, for the Commonwealth of Pennsylvania.  
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1 MR. SULLIVAN: Thank you, your Honor. Thank you  
2 for this indulgence. Just so it's clear, I'm here today to  
3 speak on behalf of the International Union of Operating  
4 Engineers, Local 68 Welfare Fund. It's an organization out  
5 of the State of New Jersey.

6 By way of very brief background, I know the day is  
7 getting long, we filed an action on behalf of the  
8 International Union, Local 68, on June 30th, 2003, Chancery  
9 Division, Mt. Mechanics Superior Court, New Jersey. At the  
10 same time, we also filed a motion to show cause with  
11 restraints asking for certain types of injunctive relief on  
12 behalf of the union and the people of the class the union  
13 wishes to represent.

14 The class itself is a state action for state  
15 limited claim. We are only seeking to represent those  
16 persons in New Jersey. We've not filed a national class  
17 action, we've not filed a multiple state class action, we've  
18 not sought to invoke federal statutes, such as ERISA or  
19 Medicare, we've not pled --

20 THE COURT: You want to remand?

21 MR. SULLIVAN: It's a lead-in, it's a lead-in to  
22 where we part some of our issues, and we're not seeking to  
23 represent any Government entities that again would have  
24 federal issues come up.

25 THE COURT: You've been transferred here?

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1 MR. SULLIVAN: Yes.

2 THE COURT: I wasn't prepared. Your case was part  
3 of the MDL, it was transferred here, and now you don't want  
4 to be here, so you want to go home?

5 MR. SULLIVAN: We want to go home.

6 THE COURT: Have you filed a motion to go home?

7 MR. SULLIVAN: We've been waiting for a hearing,  
8 your Honor, on the motion to remand. A little bit of the  
9 procedural background --

10 THE COURT: You want a hearing?

11 MR. SULLIVAN: We've been waiting for a hearing.

12 THE COURT: You know, would you call here.  
13 There's so much going on here, if you filed a motion and you  
14 need a hearing, and you thought we've dropped you through  
15 the cracks, call. I think we actually anticipated because I  
16 had my clerk do an inventory of everything that was pending.  
17 April 8th.

18 MR. SULLIVAN: Thank you, your Honor.

19 THE COURT: Okay. It's nicer then.

20 MR. SULLIVAN: The reason why we want to go back  
21 to New Jersey is part of our relief is we've been requesting  
22 and we still want to request injunctive relief against the  
23 defendants we've sued. That's not part of the lawsuit or  
24 the MDL matter that's before your Honor today. We believe  
25 that that is very important relief that can be recovered

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1 under the New Jersey Consumer Fraud Act, and it's very  
2 valuable relief to our clients because not only are we  
3 seeking monetary damages for the present, but we are seeking  
4 injunctive relief so that we don't have to come back in the  
5 future.

6 THE COURT: Let me ask you, if this new  
7 legislation passes, does it affect you?

8 MR. SULLIVAN: I think we'll have to wait to see  
9 how well the certain other groups of individuals, such as  
10 the Democrats are able to change the legislation. In the  
11 short, I don't know, your Honor, whether or not --

12 THE COURT: I'm just wondering, I'm reading every  
13 day about it. I can't quite tell.

14 MR. SULLIVAN: I'm hoping it doesn't. Obviously,  
15 it depends which versions go through. Prior versions would  
16 take just about every class action out of state court and  
17 move it into federal court.

18 THE COURT: It may be moot, it may be not?

19 MR. SULLIVAN: Yes, maybe. Hopefully not,  
20 hopefully we can go back to New Jersey and stay there.  
21 Thank you, your Honor.

22 THE COURT: Thank you very much.

23 MR. SHAPIRO: Judge, can I have 30 seconds on  
24 behalf of the relater in the California case?

25 THE COURT: You gave me an ex parte motion which I

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1 didn't know you wanted to argue today.

2 MR. SHAPIRO: All we want to do is make it clear  
3 that the State of California and the relater in that case  
4 want any class certification to exclude governmental  
5 entities who are bringing Medicaid claims on behalf of the  
6 governmental entity, and the Plaintiffs' motion in the case  
7 and the proposed order leave it somewhat unclear as to the  
8 position with respect to the governmental entity.

9 THE COURT: I just skimmed your ex parte motion,  
10 and I thought it was about something else, but maybe I  
11 didn't read it closely enough.

12 MR. SHAPIRO: That is with respect to something  
13 else which I don't think we need to take up for now.

14 THE COURT: Why don't you do this, why don't you  
15 file -- do you have something filed that says that?

16 MR. SHAPIRO: I think something should have been  
17 filed before the hearing today.

18 THE COURT: Maybe I just missed it. Has anyone  
19 received it?

20 MR. SOBOL: If I may, your Honor, as I tried to  
21 explain to Mr. Shapiro before the hearing, if there's a  
22 particular clarification that he needs, he can probably  
23 bring it up to the attention of counsel, we can see if we  
24 could work out a stipulation, if we could.

25 THE COURT: Why don't you do this, he's apparently